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DE RUEHC #2219/01 2831443
ZNR UUUUU ZZH
R 101426Z OCT 07
FM SECSTATE WASHDC
TO WESTERN HEMISPHERIC AFFAIRS DIPL POSTS

UNCLAS SECTION 01 OF 04 STATE 142219

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E.O. 12958: N/A

TAGS: [EAIR](#) [ECON](#) [ETRD](#) [SENV](#)

SUBJECT: AVIATION EMISSIONS: 36TH ICAO ASSEMBLY SUPPORT
MUTUAL CONSENT

REF: STATE 83246

¶1. (U) Portions of this message are sensitive but unclassified. Please handle accordingly. Summary: The 36th

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ICAO Assembly reached agreement on a set of actions to address an array of aviation environmental issues, including aircraft noise, local aircraft emissions, and greenhouse gas (GHG) emissions. On the most contentious issue, GHG emissions, the U.S., with the support of a majority of ICAO contracting states, was successful in including language in the Assembly Resolution that urged States not to implement either greenhouse gas emission charges or an emissions trading scheme on other states, aircraft except on the basis of mutual agreement with that state. In response to the U.S. proposal for a comprehensive approach to GHG emissions and European desires to address the issue on a fast track and at an appropriately high level, the Assembly also agreed to develop a comprehensive plan on international aviation and climate change. The plan includes formation by the ICAO Council of a senior-level &Group on International Aviation and Climate Change8 (supported by the Committee on Aviation Environmental Protection (CAEP)), which will develop a framework to achieve emissions reductions based on voluntary measures, technological advances, operational measures, positive economic incentives and market-based measures. The Council will convene a high level meeting in advance of the next Assembly in 2010 to present the program and recommendations for ICAO review.

¶2. (U) Despite the clear majority in favor of &mutual consent8, Europe would not cede its position. Portugal, speaking on behalf of the member states of the European Community and the other states of the European Civil Aviation Conference (ECAC) (42 States in all) entered a formal &reservation8 on the Appendix dealing with emissions trading, reserving its view that it has the right to apply market-based measures on all operators of all states operating to, from or within their territories. Otherwise, the Europeans supported the environmental Consolidated Resolution, including Appendices A-K. End Summary.

¶3. (SBU) COMMENT: The Assembly outcome represents the beginning of what are likely to be difficult dealings with Europe on aviation emissions measures over the next few years. In addition, a much more assertive developing world, threatened by the EU's unilateral actions, is seeking additional protection from other international treaties such as the UN Framework Convention on Climate Change (UNFCCC), a step that may further complicate efforts to preserve the uniform standard-setting activities in ICAO. End Comment.

NOISE

¶4. (U) The ICAO Council submitted a report on progress made

by ICAO since the 35th session of the Assembly on aircraft noise. Material had been developed for inclusion in the ICAO Guidance on the Balanced Approach to Noise Management. During the Executive Committee presentation of papers on this issue, both India and Nigeria proposed a review of night curfew restrictions imposed on some states/airports. Both argued that because of improvements in aircraft performance, and reductions in noise, such curfews were no longer needed.

¶15. (U) In further discussion, it was noted that reductions in aircraft noise were being offset by traffic growth, and there was a need to continue efforts to reduce noise at source. Noise management/reduction should therefore continue to be addressed through the balanced approach. On night curfews, a majority of speakers indicated that the subject was already being addressed as part of the balanced approach, and this approach should be continued.

¶16. (U) This issue was addressed in Appendix C (Policies and Programmes Based on a &Balanced Approach&8 to Aircraft Noise Management) of the draft forwarded to the Assembly for approval. The U.S. joined consensus approving the language in this appendix, which supports continued adherence by States to the balanced approach to noise management.

AVIATION EMISSIONS

¶17. (U) Because there was general support for continued ICAO leadership in taking a comprehensive approach to aviation GHG emissions relative to the role of other UN entities, the

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Executive Committee discussion of aviation greenhouse gas emissions focused on two issues: 1) the unilateral imposition of market-based measures (such as the EU's emissions trading proposal) on airlines without consent of governments; and, 2) the need to take into account the concept of &common but differentiated responsibilities&8 (CBDR) when imposing any obligations on developing States to address climate change.

¶18. (U) Australia, Chile, China, Egypt (representing the Arab Civil Aviation Conference), India, Indonesia, Nigeria (representing the African Civil Aviation Commission AFCAC), Japan (on behalf of a group of countries including the United States), Portugal (representing the European Civil Aviation Conference (ECAC), the EU and Eurocontrol), Brazil, and the World Tourism Organization all presented papers. A number of States also made separate interventions. There was strong verbal support for mutual consent from states outside Europe. Developing countries were focused on the impact any market-based measures would have on their economies and aviation industries, and spoke out strongly in favor of inclusion of explicit language referencing CBDR in any Assembly resolution.

¶19. (U) Since the text on market-based measures in the draft Assembly Resolution was heavily bracketed going into the Assembly, the Chairman of the Executive Committee (President of the Assembly, DOT Under Secretary Jeff Shane) convened an informal drafting group to focus on the outstanding issues. The group was made up of 14 countries representing the various regions of the world (Argentina, Australia, Brazil, Canada, China, India, Japan, Nigeria, Portugal, Russia, Saudi Arabia, South Africa, United States, and the United Kingdom). The U.S. team was led by DOT Assistant Secretary Andy Steinberg.

¶10. (U) Australia, Brazil, Argentina, Canada, China, Japan, Nigeria, Saudi Arabia, South Africa and the United States all favored language on mutual consent in the resolution. The wild card issue was CBDR, and how that would influence each state's (particularly developing states) position as the negotiations on a text moved forward.

COMMON BUT DIFFERENTIATED RESPONSIBILITIES

¶11. (SBU) The concept of CBDR is enshrined in the UNFCCC and the Kyoto Protocol. While, on its face, it calls for responsibilities on the part of all countries, developing countries have interpreted CBDR as freeing them from having to take on any emissions reductions; they cite CBDR as dividing the world into only two categories) so-called Annex I countries (based on a list in the UNFCCC) and non-Annex I countries. Developing countries have successfully introduced this principle in a variety of other international environmental fora. However, as CBDR is not consistent with the Chicago Convention principle of non-discrimination, ICAO has thus far satisfied developing country concerns by simply acknowledging the differing circumstances of developing countries. At this Assembly, however, developing countries were asking for explicit application/relevance in the ICAO context of CBDR commitments under the Kyoto Protocol and the UNFCCC. The U.S. has supported CBDR in the climate context, but was concerned about the implications it would have for ICAO's standard-setting role in other areas.

¶12. (SBU) In the Friends group, China, - with sometime support from Nigeria, Brazil and Argentina - pushed for explicit language & operationalizing⁸ the concept of CBDR in the ICAO context. Despite earlier arguments that their emissions trading proposal was based on the principle of non-discrimination, and thus must be applied equally to all carriers, the European states had seized on developing country interest in CBDR as a way to persuade developing countries to support the EU emissions trading scheme, and to move away from mutual consent. Expressing their support for CBDR, EU states argued that the EU ETS was consistent with the concept, noting that the bulk of the financial and economic burden would be borne by developed countries anyway.

(Comment: By making this declaration, the EU clearly tried to drive a wedge between the U.S. and developing countries on support for the USG position on mutual consent. By opening discussion on CBDR, the EU has allowed for CBDR to become part of the ICAO rhetoric. End Comment.) Behind the scenes in meetings with various delegations and regional groups, the U.S. negotiating team countered these arguments by pointing out that mutual consent offered better legal protection than &de facto⁸ CBDR under the EU ETS, especially as major developing countries would already be included (Argentina, Brazil, China, India, etc.) and the EU could offer no guarantees that developing countries would not be affected at some future point in time, regardless of whether they were

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now. This argument appeared to gain significant traction in the Friends group.

¶13. (U) The Friends group ultimately agreed to include preambular (not operational) language in sections of the draft Resolution dealing with cooperation with the United Nations, ICAO's program of action on international aviation and climate change, and market-based measures. The language acknowledges both ICAO's principle of non-discrimination, and the provisions on CBDR under the UNFCCC and the Kyoto Protocol. The Council, in conducting further studies and evaluating emissions trading, is requested to take into account potential implications for developed as well as developing countries.

¶14. (SBU) NOTE: Future U.S. negotiators at ICAO should be aware that we read the preambular paragraph as referring to the relevance of CBDR under FCCC/Kyoto, not to the relevance of CBDR under ICAO. On the contrary, the inclusion of the non-discrimination principle under the Chicago Convention right next to CBDR, was intended (1) to preserve our argument that CBDR applies under Kyoto/UNFCCC but is not consistent with the Chicago Convention if interpreted to require different standards for different states and (2) barring that

argument, to isolate CBDR from being applied in other ICAO standard-setting areas such as safety and security. U.S. negotiators should resist attempts to include any language in ICAO documentation that could be interpreted as confirming that CBDR is necessarily consistent with the Chicago Convention and should also resist calls for CBDR to be introduced in contexts other than the environment. END NOTE

¶115. (U) In a nod to the European delegates, the Friends group also agreed to a proposal to request the ICAO Council to form a high level group (the &Group on International Aviation and Climate Change8) supported by ICAO's Committee on Aviation Environmental Protection (CAEP), to develop a comprehensive plan on international aviation and climate change. The plan includes a framework to achieve emissions reductions based on voluntary measures, technological advances, operational measures, positive economic incentives and market-based measures; and, the Council will convene a high level group in advance of the next Assembly (2010) to consider the findings.

The group will consider many issues, including the possible establishment of a global aspirational goal for energy efficiency in the aviation sector.

EXECUTIVE COMMITTEE SUPPORTS MUTUAL CONSENT BUT EU RESERVES

¶116. (U) Despite significant progress on the rest of the texts, the Friends group was forced to forward the drafts back to the Executive Committee with bracketed language on GHG emission charges and emissions trading in Appendix L. During the Executive Committee discussion of draft Appendix L, numerous states from around the world including Barbados, Mauritius, Egypt, Nigeria, Brazil, China, Mexico, Canada, and Australia spoke up in support of removing the brackets around the language urging contracting states not to implement either GHG emission charges or an emissions trading system on other contracting states, aircraft except on the basis of mutual consent. European delegations including Germany, France, Norway, the United Kingdom and the Netherlands expressed support for the opposite view. Ultimately, the Chair of the Executive Committee concluded that a majority of states supported implementation of either GHG emission charges or emissions trading for aviation only on the basis of mutual agreement, and approved adoption of Appendix L on that basis.

¶117. (U) The Portuguese delegation, representing the 27 states of the European Community, and other states of the European Civil Aviation Conference (ECAC) (42 states in total) entered its formal reservation on the text of Appendix L, stating their view that the resolving clauses lacked legal foundation in the Chicago Convention and could not be used to diminish their rights. They reserved the right to apply market-based measures such as those described in Appendix L to all operators of all states operating, to, from or within their territories.

¶118. (U) Given the relatively tight ICAO budget passed by the Assembly for the triennium 2008-2010, the Secretary General addressed the Plenary with an appeal for the establishment of a new voluntary fund to support the environmental tasks being proposed. Instead, the Assembly added text (clause 7) to the environmental resolution, Appendix A which appeals in general terms for additional resources. Clause 7 specifically, "Invites States to continue their active support for ICAO's environment-related activities, and urges Contracting States to support activities not foreseen in the budget by providing a reasonable level of voluntary

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contributions."

¶119. (U) The full Plenary adopted the texts of the Assembly Resolution on Environmental Protection with minor editorial changes.

¶20. (SBU) COMMENT: The end result represents a clear statement from the global aviation community that unilateral imposition of environmental measures on other states is contrary to the fundamental principles of ICAO, and that ICAO should retain its leadership role in developing standards and recommended practices for international civil aviation, including with respect to the environment. It is disappointing that Europe remained unwilling to join consensus on this issue, especially as ICAO States had agreed to take up large parts of their proposal in the development of a solid plan to develop actions to address the issue of aviation and climate change.

¶21. (SBU) The issues surrounding the use of market-based measures to deal with aviation GHG emissions are far from resolved. They will resurface in the context of political discussions in the &high level group8 to be formed by the ICAO Council, and will likely be the subject of further negotiations within the air services context. Given the strong political pressure within the EU to address aviation GHG emissions, we will need to continue to urge the European Union to engage with their aviation partners around the world to address aviation environmental challenges in a collaborative and concrete fashion. END COMMENT.

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